

TITLE 22, DIVISION 2, CALIFORNIA CODE OF REGULATION

CHAPTER 3. SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986

ARTICLE 9. MISCELLANEOUS

Section 12903. Notices of Violation

(a) For purposes of Health and Safety Code section 25249.7(d), “notice of the violation which is the subject of the action” (hereinafter “notice” or “sixty-day notice”) shall mean a notice meeting all requirements of this section. No person shall commence an action to enforce the provisions of the Act “in the public interest” pursuant to Health and Safety Code section 25249.7(d) except in compliance with the provisions requirements of this section.

(b) Contents of Notice.

(1) General Information. Each notice must include as an attachment a copy of “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary” (see Appendix A) prepared by the lead agency. This attachment need not be included in the copies of sixty-day notices sent to public enforcement agencies. A copy of this attachment may be obtained by writing to the Office of Environmental Health Hazard Assessment at P.O. Box 942732, Sacramento, CA 94234-7320.

(2) Description of Violation. A notice shall provide adequate information from which to allow the recipient to assess the nature of the alleged violation, as set forth in this paragraph. The provisions of this paragraph shall not be interpreted to require more than brief and reasonably clear information, expressed in terms of common usage and understanding, on each of the indicated topics.

(A) For all notices, the notice shall identify:

- i. the name, address, and telephone number of the noticing individual or a responsible individual within the noticing entity and the name of the entity;
- ii. the name of the alleged violator or violators;
- iii. the approximate time period during which the violation is alleged to have occurred; and
- iv. the name of each listed chemical involved in the alleged violation;

(B) For notices of violations of Health and Safety Code section 25249.5, a general identification of the discharge or release and of the source of drinking water into

which the discharges are alleged to have occurred, to be occurring or to be likely to occur.

- (C) For all notices of violation of Health and Safety Code section 25249.6, the route of exposure by which exposure is alleged to occur (e.g., by inhalation, ingestion, dermal contact);
- (D) For notices of violation of Health and Safety Code section 25249.6 involving consumer product exposures, the name of the consumer product or service, or the ~~category-specific type~~ of consumer product or services, that cause the violation, with sufficient specificity to inform the recipients of the nature of the items allegedly sold in violation of the law and to distinguish those products or services from others sold or offered by the alleged violator for which no violation is alleged;. The identification of a chemical pursuant to subsection (b)(2)(A)(iv) must be provided for each product or service identified in the notice.
- (E) For notices of violation of Health and Safety Code section 25249.6 involving occupational exposures:

 - i. the ~~general geographic location~~ identification of the facility or workplace of the unlawful exposure to employees, or where the exposure occurs at many locations, a description of the occupation or type of task performed by the exposed persons;
 - ii. where the alleged violators ~~is include~~ the manufacturer or distributor of the chemical or products causing the exposure, the notice shall ~~also include the identification of~~ identify products in the same manner as set forth for consumer product exposures in paragraph (2)(D), above;
- (F) For notices of violation of Health and Safety Code section 25249.6 involving environmental exposures as defined in section 12601(d) of this title, the notice shall identify, ~~the general geographic location of the source of the unlawful exposure and whether the unlawful exposure occurs beyond the property owned or controlled by the alleged violators.~~ the location of the source of the exposure. Where numerous sources of the exposure are alleged, the location need not be stated if the notice identifies each facility or source of exposure by stating those common characteristics that result in the allegedly unlawful exposure in a manner sufficient to distinguish those facilities or sources from others for which no violation is alleged. The notice shall state whether the exposure for which a warning allegedly is required occurs beyond the property owned or controlled by the alleged violators.

(3) Where the alleged violations fall within more than one of the categories described in paragraph (2)(B) to (2)(F) above, then the notice shall comply with all applicable requirements.

(4) A notice is not required to contain the following information:

(A) The specific retail outlet or time or date at which any product allegedly violating the Act was purchased;

(B) The level of exposure to the chemical in question;

(C) The specific admissible evidence by which the person providing the notice will attempt to prove the violation;

(D) For consumer products, the UPC number, SKU number, model or design number or stock number or other more specific identification of the products;

(E) For geographic areas, the lot, block, or other legal description of the property in question.

(c) Service of Notice.

(1) Notices shall be served by first class mail or in any manner that would be sufficient for service of a summons and complaint under the California Code of Civil Procedure.

(2) A certificate of service shall be attached to each notice listing the time, place, and manner of service and each of the parties upon which the notice was served.

(3) Notices shall be served upon each alleged violator, the Attorney General, the district attorney of every county in which a violation is alleged to have occurred, and upon the city attorneys of any cities with populations according to the most recent decennial census of over 750,000 and in which the violation is alleged to have occurred.

(4) Where the alleged violator has a current registration with the California Secretary of State that identifies a Chief Executive Officer, President, or General Counsel of the corporation, the notice shall be addressed to one of those persons.

(d) Computation of Time.

(1) An action is deemed to have been “commenced more than sixty days after the person has given notice” where more than sixty days have elapsed from the date of service of the notice, as that date would be calculated for service of a document pursuant to the provisions of Code of Civil Procedures section 1013.

- (2) Where the sixtieth day after giving notice is a day identified as a “holiday” as defined in Code of Civil Procedure section 12a, then the “sixtieth day” shall be extended to the next day which is not a “holiday” as defined in Code of Civil Procedure section 12a.
- (3) Determination of the first and last day shall be made in accordance with section 12 of the Code of Civil Procedure.

NOTE: Authority cited: Health and Safety Code Section 25249.12. Reference: Health and Safety Code Section 25249.7.

[Note to Reader: This regulation is intended to be effective prospectively and does not apply to notices given before its effective date.]

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “Proposition 65”). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The “Governor’s List.” Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. ~~The requirement to warn applies twelve months after the date of listing of the chemical.~~ Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it ~~could enter~~ passes or probably will pass into a source of drinking water. ~~This prohibition applies twenty months after the date of listing.~~

of the chemical. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer (“carcinogens”), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify ~~chemical-specific no significant risk levels~~ specific ‘no significant risk’ levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm (“reproductive toxicants”), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level (NOEL),” divided by a 1,000-fold safety or uncertainty factor. The “no observable effect level” is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a “significant amount” of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical did not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. ~~A “significant amount” means any detectable amount of the listed chemical, except when the discharger can show that exposure in drinking water to the amount detected poses no significant risk or cancer, or is below the NOEL for reproductive toxicity divided by 1,000.~~ A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” or “no observable effect” test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population

exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.